IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WP(C).No. 26226 of 2004(V)

PETITIONER:

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1. ANSARI, S/O. ARIFA, KALIYIL PURAYIDAM,
   EDAVA P.O., THIRUVANANTHAPURAM.

2. ALI AKBAR, KALIYIL PURAYIDAM,
   EDAVA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.R.ANILKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY, HOME DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. MOHAMMED ALI, S/O. MOHAMMED KUNJU
   SEEJET, PALATHEDI VEEDU, EDAVA P.O.,
   (VIA) VARKALA, THIRUVANANTHAPURAM.

3. SUB INSPECTOR OF POLICE,
   VARKALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB
SRI.M.V.THAMBAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE PHOTOCOPY OF THE FIR IN CRIME NO.539/2002 DT.1.11.02.

EXT.P2: TRUE PHOTOCOPY OF DOCUMENT NO.3246 DATED 07.08.1995.

EXT.P3: TRUE PHOTOCOPY OF LAND TAX RECEIPT NO.44 DATED 1.1.98 OF EDAVA GRAMA PANCHAYAT.

EXT.P4: TRUE PHOTOCOPY OF CHARGE IN CC NO.803/03 BEFORE JFCM COURT, VARKALA DT.1.11.02.

EXT.P5: TRUE PHOTOCOPY OF THE PLAINT IN SUIT NO.285/02 BEFORE THE MUNSIFF'S COURT, VARKALA DT.17.10.02.

EXT.P6: TRUE PHOTOCOPY OF THE ADVOCATE COMMISSIONER'S REPORT IN OS.285/2002 DT.25.11.02.

/TRUE COPY/

P.A TO JUDGE

R.BASANT, J

W.P(C).No.26226 of 2004

Dated this the 11th day of April, 2007

JUDGMENT

The petitioners are accused in a prosecution for offences punishable under Sections 447, 427 and 294 (b) read with 34 I.P.C. Proceedings have been initiated on the basis of an F.I statement lodged by the 2nd respondent herein. It is the case of the 2nd respondent that the property in question - 15 cents of land, belongs to his daughter and son-in-law. The 2nd respondent is allegedly in possession of the property on behalf of his daughter and son-in-law. The crux of the allegations against the petitioners is that they on 21.10.2002 at 1 p.m committed criminal trespass into the property in the possession of the 2nd respondent. They allegedly indulged in acts of mischief in the property. It is further alleged that the offence punishable under Section 294 (b) I.P.C was also committed by the petitioners.

2. After due investigation, the police filed final report and on the basis of the said final report, cognizance has been taken by the learned Magistrate.

3. The petitioners have, in these circumstances, come to this Court with the plea that the allegations raised against them - are not

sustainable, are false and are raised with vexatious intent. In these circumstances, powers under Article 226/227 of the Constitution may be invoked to prematurely terminate the proceedings against the petitioners, it is prayed.

4. The learned counsel for the petitioners was requested to explain the facts. The learned counsel for the petitioners relies on three circumstances to justify the prayer for quashing of proceedings. First of all it is contended that in the F.I statement, the only allegation is that loss of Rs.1,000/- has been caused by the culpable acts of the petitioners, whereas in the final report it is alleged that loss of Rs.10,000/- has been caused. This reason, by itself, is according to me, too insufficient an excuse to justify invocation of the powers under Article 227 of the Constitution.

5. Secondly it is contended that the property in question is really in the possession of the mother of the petitioners and is not in the possession of the 2nd respondent or his daughter and son-in-law. It is contended that the 2nd respondent's daughter and son-in-law have no title even over the property and steps have been taken before the civil court to challenge the alleged title of the 2nd respondent's daughter and son-in-law.

6. A civil suit is, without dispute, pending before the Munsiff's Court, but there is no contention even that there is any interim order

in favour of the petitioners. In fact, the learned counsel for the petitioners submits that an interim application for injunction was dismissed by the trial court and the same was later upheld by the appellate court in the C.M.A. No order of the civil court is available with the petitioners to justify the contention that the allegations raised against them are false, malicious or with oblique motives.

7. The learned counsel for the petitioners thirdly relies on Ext.P6. That is only a preliminary report submitted by the Commissioner. In spite of the said report of the Commissioner, without dispute, the civil court had not granted any order in favour of the petitioners. In these circumstances, the prayer to quash the proceedings, on the basis of Ext.P6 preliminary report submitted by the Commissioner, cannot also succeed.

8. No other contentions are raised. I am satisfied, in these circumstances, that this is not a fit case where the powers under Section 482 Cr.P.C/Article 227 of the Constitution can or need be invoked to prematurely terminate the proceedings pending against the petitioners.

9. This Writ Petition is, in these circumstances, dismissed. I may hasten to observe that I have only intended to hold that powers under Article 227 of the Constitution/Section 482 Cr.P.C need not be invoked now and have not intended to express any opinion on merits

on the factual controversies. All relevant contentions can be raised before and must be considered on merits by the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-